

Zambia

## Industrial and Labour Relations Act, 1993

### Chapter 269

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# Industrial and Labour Relations Act, 1993

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## Zambia

# Industrial and Labour Relations Act, 1993

## Chapter 269

Commenced on 30 April 1993

*[This is the version of this document as it was at 31 December 1996 to 25 September 2008.]*

*[Act No. 27 of 1993; 13 of 1994]*

**An Act to revise the law relating to trade unions, the Zambia Congress of Trade Unions, employers' associations, the Zambia Federation of Employers, recognition agreements and collective agreements, settlement of collective disputes, strikes, lockouts, essential services and the Tripartite Labour Consultative Council; the Industrial Relations Court; to repeal and replace the Industrial Relations Act, 1990; and to provide for matters connected with or incidental to the foregoing.**

### 1. Short title

This Act may be cited as the Industrial and Labour Relations Act.

### 2. Application and power of exemption

- (1) Subject to subsection (2), this Act shall not apply to—
  - (a) the Zambia Defence Force;
  - (b) the Zambia Police Force;
  - (c) the Zambia Prison Service;
  - (d) the Zambia Security Intelligence Service; and
  - (e) Judges, registrars of the court, magistrates and local court justices.
- (2) The Minister may, after consultation with the Tripartite Consultative Labour Council, by statutory instrument, and subject to such conditions as he may prescribe, exempt any person or class of persons or any trade, industry or undertaking from all or any of the provisions of this Act, or any regulation or order made, or any direction given, in pursuance of this Act.
- (3) The Companies Act, the Societies Act and the Co-operatives Societies Act shall not apply to any trade union or association.  
*[Cap. 388; Cap. 119; Cap. 397]*
- (4) Any organisation which is intended to carry out activities of a trade union or an employers' association shall be registered only under this Act and any registration under the Companies Act, the Societies Act and the Co-operative Societies Act shall be void.  
*[Cap. 388; Cap. 119; Cap. 397]*

### 3. Interpretation

- (1) In this Act, unless the context otherwise requires—

**"association"** means an organisation of employers registered as an association under this Act whose principal objects are the regulation of collective relations between employers and employees or between employers and trade unions;

**"bargaining unit"** means—

- (a) in relation to collective bargaining at the level of an undertaking other than an industry, the negotiating team representing the management of the undertaking together with the trade union representatives of employees in such undertaking; and
- (b) in relation to collective bargaining at the level of an industry, a joint council;

**"Chairman"** means the person appointed Chairman of the Court under section eighty-six;

**"collective agreement"** means an agreement negotiated by an appropriate bargaining unit in which the terms and conditions affecting the employment and remuneration of employees are laid down;

**"collective bargaining"** means the carrying on of negotiations by an appropriate bargaining unit for the purpose of concluding a collective agreement;

**"collective dispute"** shall be construed in accordance with section seventy-five;

**"Commissioner"** means the Labour Commissioner;

**"Congress"** means the Zambia Congress of Trade Unions;

**"Court"** means the Industrial Relations Court established under section eighty-four;

**"deadlock"** means a situation arising out of a collective dispute where the parties to the dispute have exhausted the procedure, whether formal or otherwise, mutually agreed to by the parties for the settlement of the dispute, where conciliation in terms of section seventy-eight has proved unsuccessful, and where either or both parties are of the opinion that further negotiations are unlikely to lead to the settlement of the dispute;

**"Deputy Chairman"** means the person appointed Deputy Chairman of the Court under section eighty-six;

**"eligible employee"** means a unionised employee other than a member of the management of an undertaking;

**"employee"** means any person who has entered into, or works under, a contract of employment with an employer whether such contract is express or implied, oral or written, or serving a probationary period of employment, a casual employee, an employee specifically engaged on a temporary basis for work of an intermittent or seasonal nature;

**"employer"** means any person who, or body of persons, firm, company, corporation or public authority which, has entered into a contract to employ any person and includes any agent, representative or manager of such person, body of persons, firm, corporation, company or public authority who is placed in authority over the persons employed;

**"essential service"** shall be construed in accordance with section one hundred and seven;

**"executive officer"** means the Secretary-General, General Secretary, or executive director of a trade union, Congress, association or Federation;

**"Federation"** means the Zambia Federation of Employers established under section fifty-five;

**"joint council"** means a joint council established under section sixty-six;

*[Please note: definitions omitted in the original.]*

*[Cap. 268]*



## Part II – Trade unions

### 4. Definition of management

An employee shall cease to be an eligible employee and become a member of management if the employee –

- (a) is empowered to make management decisions;
- (b) is entrusted with personnel management and industrial relations functions; or
- (c) reports directly to the Chief executive:

Provided that where there is a disagreement on the point when an eligible employee becomes a member of management, the matter shall be referred to the Minister for resolution, subject to appeal to the Court.

### 5. Rights of employees in respect of trade union membership and its activities

- (1) Notwithstanding anything to the contrary contained in any other written law, and subject to this Act—
  - (a) every employee shall, as between himself and his employer, have the following rights:
    - (i) the right to take part in the formation of a trade union;
    - (ii) the right to be a member of any trade union of his choice;
  - (b) every eligible employee shall as between himself and his employer, have the following rights:
    - (i) the right, at any appropriate time, to take part in the activities of the trade union including any activities as, or with a view to becoming, an officer of the trade union and the right to seek election or accept appointment and, if elected or appointed, to hold office as such officer; and
    - (ii) the right to absent himself from work without leave of the employer for the sole purpose of taking part in the activities of the trade union, including any activities as, or with a view to becoming an officer of the trade union, and the leave of absence though applied for was unreasonably withheld by the employer.
- (2) No employer, or any person acting on his behalf shall—
  - (a) prevent, dismiss, penalise or discriminate against or deter an employee from exercising any of the rights conferred on him by subsection (1);
  - (b) refuse to engage a person, or dismiss, penalise or discriminate against any employee on the ground that, at the time of applying for an engagement, he was or was not a member of a trade union or of a particular trade union or other organisation of employees; or
  - (c) dismiss, penalise or discriminate against an employee on the grounds that such employee—
    - (i) has been or is a complainant or a witness or has given evidence in any proceedings, whether instituted against the employer before the Court or any other court;
    - (ii) is entitled to a reward, benefit or compensation against the association or the class of employers to which such employer belongs or against any other person, in consequence of a decision made by a Court in his favour or in favour of a trade union or the class of employees to which such employee belongs;
- (3) No employer or organisation of, or representing, employers, or any person acting on the employers' or organisations' behalf, shall render financial or other assistance to any trade union or any officer with the object of exercising any control over or influence in the activities of such trade union.

- (4) An employee who has reasonable cause to believe that the employees' services have been terminated or that the employee has suffered any other penalty or disadvantage for exercising an employees' rights as specified in this section may—
- (a) within thirty days after exhausting administrative channels available to the employee in the employee's institution; or
  - (b) where administrative channels are not available, within thirty days of knowing that the employee's services have been so terminated or that the employee has been so disadvantaged or penalised;

lay a complaint before the Court.

- (5) Any person who contravenes any of the provisions of this section shall be guilty of an offence, and liable upon conviction, to a fine not exceeding one thousand penalty units and may be prohibited from holding office in an association for such period as the Court may determine.
- (6) In this section, "appropriate time", in relation to an employee taking part in any activities of a trade union, means any time which—
- (a) is outside the employees' working hours; or
  - (b) is a time within the employees' working hours at which, in accordance with arrangements agreed with, or consent given by or on behalf of, the employees' employer, it is permissible for the employee to take part in those activities;

and in this subsection, "working hours", in relation to an employee, means any time when in accordance with the employees' contract of employment the employee is required to be at work.

*[As amended by Act [No. 13 of 1994](#)]*

## **6. Obligations of employees in respect of trade union and its activities**

Every employee shall promote, maintain and co-operate with the management of the undertaking in which the employee is employed in the interest of industrial peace, greater efficiency and productivity.

## **7. Registration and consequences of non-registration**

- (1) Every trade union shall be registered under this Act with the Commissioner within six months from the date of formation.
- (2) If the Commissioner refuses to register a trade union, the Commissioner shall notify the trade union of such refusal and the trade union shall be dissolved within six months from the date of the notification.
- (3) Every trade union which is not registered or dissolved, as the case may be, within the period prescribed in subsection (1) or (2), and every officer of such trade union, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding four penalty units for every day that it remains unregistered or undissolved, as the case may be, after the expiration of such period, and every such officer may in addition be prohibited from holding office in any other trade union for a period of three years.

*[As amended by Act [No. 13 of 1994](#)]*

## **8. Acts of unregistered trade unions and their officers**

- (1) No trade union or officer shall perform any act in furtherance of the objects for which it has been formed unless such trade union is registered under this Act.
- (2) Any trade union which, or officer who, contravenes subsection (1) shall be guilty of an offence and liable upon conviction to a fine not exceeding two hundred penalty units, and every such officer

may in addition be prohibited from holding office in any other trade union for a period determined by the Court.

[As amended by Act [No. 13 of 1994](#)]

## 9. Application for registration of trade union

- (1) Subject to subsection (3), a body shall not be registered as a trade union with the Commissioner unless it has a membership of not less than one hundred persons.
- (2) An application to register as a trade union shall be in the prescribed form signed by one hundred supporters and shall be accompanied by a copy of the constitution of the proposed trade union.
- (3) The application and the constitution referred to in subsection (2) shall be submitted to the Commissioner for registration.
- (4) Notice of every application for registration as a trade union shall be published in three consecutive issues of the *Gazette*.
- (5) Objections to the registration of any body as a trade union shall be in writing and shall be lodged with the Commissioner not later than ninety days of the last notice appearing in the *Gazette*.
- (6) Subject to subsection (8) the Commissioner—
  - (a) after considering the objections submitted under subsection (5); and
  - (b) on being satisfied that the body proposed to be registered as a trade union has complied with the provisions of registration under this Act, and that the constitution of that body provides for matters prescribed by section eight;shall unless the proposed trade union is incapable of implementing any of its principal objects, register such body and issue a certificate of registration in the prescribed form to that body.
- (7) A certificate of registration issued under subsection (6) unless proved to have been withdrawn or cancelled shall be *prima facie* evidence that the provisions of this Act relating to registration have been complied with.
- (8) No body registering as a trade union shall be registered—
  - (a) under a name identical to or by which any other trade union has been registered or so nearly resembles such name as to be likely to deceive its own members or members of the public;
  - (b) if it does not comply with the conditions of registration which the Minister may by statutory instrument prescribe; or
  - (c) if it purports to represent a class or classes of employees already represented by an existing trade union or are eligible for membership of an existing trade union unless the union intended to be registered represents a specific trade or profession or category or eligible employees who are qualified to form a trade union.

## 10. Continuation of trade unions

Every trade union established by, and registered in accordance with, section six of the Industrial Relations Act, 1990, is hereby continued as if established and registered under this Act.

[Act [No. 36 of 1990](#)]

## 11. Constitution of trade unions

- (1) The Constitution of every trade union in force immediately before the commencement of this Act shall continue in force until replaced or amended under this section.

- (2) The Constitution of every trade union and every alteration or addition to the Constitution shall be registered with the Commissioner and shall be accompanied by an authenticated copy of the resolution made to alter or add to any provision of the Constitution.
- (3) The Constitution of a trade union shall not be altered or added to so that it fails in any material way to provide for the matters specified in this section.
- (4) The constitution of every trade union shall include the provisions prescribed in the Schedule to this Act and in particular that one of the purposes to which such funds shall be applied shall be the training of trade union leaders at all levels for responsible and effective leadership, advancement of workers' education and imparting skills to the workers in preparation for their retrenchment or retirement.

## **12. Cancellation of certificate of registration of trade union**

- (1) The Commissioner shall, after obtaining the approval of the Minister, cancel the certificate of registration of a trade union—
  - (a) at the request of the trade union which has resolved to be dissolved and an application has been made in the prescribed form;
  - (b) if the certificate of registration has been obtained by fraud or mistake;
  - (c) if the trade union has wilfully violated any of the provisions of this Act; or
  - (d) if the trade union is dormant.
- (2) Where the Commissioner intends to cancel the certificate of registration under paragraph (b) or (c) of subsection (1), he shall, at least three months before cancelling the certificate, give notice in writing to the union and the union may make representations to the Commissioner within that period of notice.
- (3) The Commissioner may, after receipt from the trade union of representations, if any, and after the expiration of the three months notice, cancel the certificate of registration and shall notify the trade union accordingly.
- (4) A trade union whose registration is cancelled shall have a right of appeal to the Court in accordance with the provisions of section thirteen.
- (5) A trade union whose certificate of registration has been cancelled under this section shall, from the time of such cancellation, cease to operate as a trade union and shall be dissolved unless an appeal against such cancellation is preferred under section thirteen to the Court:

Provided that in the case of any cancellation, other than cancellation made under paragraph (a) of subsection (1), in respect of which no appeal is preferred to the court, the cancellation shall not have effect until the Court confirms the cancellation.

## **13. Appeal from decisions Commissioner**

- (1) Any person aggrieved by any refusal of the Commissioner to register a trade union, or by any decision to register an organisation as a trade union, or by the cancellation of a certificate of registration, may appeal, to the Court not later than thirty days after the notification of such refusal, decision or cancellation, as the case may be.
- (2) The Commissioner shall have the right to be heard on any appeal preferred under subsection (1).
- (3) The Chairman may make rules governing such appeals, providing for the method of tendering evidence, prescribing the procedure to be followed, the fees to be paid, and notices to be given to the Commissioner.

#### 14. Change of name or address of trade union

- (1) Subject to subsection (8) of section nine, a trade union may, in accordance with the provisions of its constitution, change its name.
- (2) Notice in writing of every change of name, signed by seven members, and countersigned by the executive officer of the executive committee of a trade union, shall be sent to the Commissioner within thirty days of the change, and the Commissioner shall register the change of name if he is satisfied that the change complies with subsection (1).
- (3) No change of name shall affect any right or obligation of a trade union or of any member, and legal proceedings in respect of such right or obligation may be commenced or, if pending, continued by, or against, the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union, notwithstanding its new name.
- (4) Notice in writing of every change in the address of the registered office of a trade union shall be sent to the Commissioner within thirty days of the change, and the Commissioner shall register the change of address.
- (5) Failure to send a notice as required by subsection (2) or (4), as the case may be, shall render the executive officer of a trade union liable, upon conviction, to a fine not exceeding twenty penalty units for every day during which the failure continues.

*[As amended by Act [No. 13 of 1994](#)]*

#### 15. Amalgamation of trade unions

- (1) Two or more trade unions may, in accordance with the provisions of their respective constitutions, amalgamate as one trade union and the new trade union so formed shall be registered in accordance with the provisions of this Act.
- (2) Any legal proceedings in respect of any rights or obligations of a trade union which has amalgamated with another trade union may be commenced, be continued, if pending, by, or against, the trade union formed as a result of the amalgamation.

#### 16. Voluntary dissolution of trade union

- (1) When it is intended to dissolve a trade union voluntarily, notice of such intention, signed by the members of the executive committee of the trade union and a copy of the resolution to dissolve the trade union, shall be sent to the Commissioner with a copy to the Congress, if the trade union is affiliated to it, and the Congress may comment on the intended dissolution within fourteen days of the receipt of the notice.
- (2) If the Commissioner is satisfied that the intended dissolution of a trade union is in accordance with its constitution, the Commissioner shall approve the dissolution of such trade union.
- (3) The Commissioner shall notify his approval to the trade union, the Federation and the Congress, if the trade union is affiliated to it.
- (4) The dissolution shall become effective from the date the Commissioner approves such dissolution.
- (5) Where a trade union is dissolved under subsection (2) or dissolved under subsection (5) of section twelve—
  - (a) the property of the trade union shall vest in the liquidator appointed by the Commissioner who shall have all the powers to recover, realise and sell such property as a trustee in bankruptcy has in relation to bankrupt's property under the Bankruptcy Act and Part V of the Bankruptcy Act relating to remuneration and costs shall, with the necessary modifications, apply to such liquidator;

*[Cap. 82]*

- (b) the liquidator shall proceed to wind up the affairs of the trade union and, after satisfying and providing for all the debts or other liabilities of the trade union, prepare a scheme for the application of its remaining assets or property for purposes likely to benefit the former members of the dissolved trade union; or distribute the assets or property or the proceeds among its former members, as the Commissioner may determine.
- (6) No action or other proceedings shall lie or be instituted against the liquidator in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

## 17. Existing trade unions and Congress

- (1) From the commencement of this Act—
  - (a) a trade union with a valid certificate of registration issued under the Industrial Relations Act, 1990 and which was affiliated to the Congress prior to that Act, shall, subject to paragraph (b), continue to be affiliated to the congress;  
*[Act No. 36 of 1990]*
  - (b) a trade union affiliated to the Congress may by a simple majority decision of the members present and voting at a general conference of that trade union cease to be affiliated to the Congress;
  - (c) a trade union registered under this Act may be affiliated to the Congress by a simple majority decision of the members present and voting at a general conference; and
  - (d) a trade union affiliated to the Congress shall have rights and privileges specified in the Constitution of the Congress.
- (2) Every registered trade union shall, upon request, supply a copy of its current constitution to every person who becomes a member of that trade union.
- (3) Any person who, with intent to mislead or defraud—
  - (a) gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union, a copy of a constitution or any amendment to it other than the current version purporting that it is the current constitution of such trade union or current amendment to it, as the case may be; or
  - (b) gives to any person a copy of any constitution purporting it to be a constitution of a registered trade union when it is not registered;shall be guilty of an offence and shall be liable, upon conviction—
  - (i) for misleading, to a fine not exceeding four hundred penalty units; or
  - (ii) to a fine not exceeding eight hundred penalty units where there was an intention to defraud; andin addition, may be prohibited from holding office in a trade union for such period as the Court may determine.

*[As amended by Act No. 13 of 1994]*

## 18. Disqualification from election or appointment as officer of trade union

- (1) No person shall be qualified for election or appointment as an officer of a trade union if he—
  - (a) has not been engaged or employed for a period of twelve months or more in the trade, occupation or industry with which the trade union is directly concerned:

Provided that the trade union may, if satisfied as to the suitability of a particular candidate, allow him to stand for such election, or be appointed, notwithstanding that he has been so engaged or employed for a period of less than twelve months;

- (b) having been an officer (or a member of the executive) of a trade union whose certificate of registration has been cancelled under section eleven, fails to satisfy the Commissioner that he did not contribute to the circumstances leading to such cancellation;
  - (c) has been convicted of an offence involving dishonesty within a period of five years preceding the election or appointment;
  - (d) is an undischarged bankrupt;
  - (e) is of unsound mind; or
  - (f) has been suspended, under its constitution or under this Act, from holding office in the trade union and his suspension has not been revoked, or the period for which he was suspended has not expired.
- (2) An officer of a trade union shall cease to hold office if any circumstances arise which would disqualify him under subsection (1) for election as an officer.
- (3) No person who is a full-time officer of a trade union shall be a full-time officer of any other trade union or of the congress unless he resigns from his first office.
- (4) The Commissioner may call for such documentation and information, as he may think necessary, from the executive committee or any officer of a trade union in order to ensure that the provisions of this section are being complied with.
- (5) Any person who acts or purports to act as an officer of a trade union after being disqualified under this section to hold office in a trade union shall be guilty of an offence and liable, upon conviction, to a fine not exceeding four hundred penalty units and in addition may be prohibited from holding office in any trade union for a period determined by the Court.

*[As amended by Act [No. 13 of 1994](#)]*

## **19. Information about elections of trade union, etc**

- (1) Where a trade union holds an election to fill any office, the trade union shall, within thirty days of the election or appointment, notify, in writing, the Commissioner, and the Congress, if the trade union is affiliated to it, of the result of the election or appointment, as the case may be.
- (2) Failure to comply with subsection (1) shall render the executive officer of the trade union guilty of an offence and liable, upon conviction, to a fine not exceeding ten penalty units for every day during which such failure continues.
- (3) The name and office of every office holder and trustee of the trade union shall be exhibited in a prominent place at the registered office, and at every branch office, of the trade union.

*[As amended by Act [No. 13 of 1994](#)]*

## **20. Injunction against officer of trade union**

- (1) Any member or officer of a trade union or any officer of the Congress, if the trade union is affiliated to it, may apply to the Court for an injunction prohibiting an officer of the trade union from holding office or dealing with funds of the trade union.
- (2) On an application made under subsection (1) the Court may, if it is satisfied that such officer is disqualified under section eighteen from holding office in that trade union, or that there is a reasonable case against such officer for the fraudulent misuse of the trade union funds, grant such application and make the necessary order.



## 21. Annual report of accounts of trade union

- (1) As soon as practicable, but not later than twelve months after the expiry of each financial year of the trade union, the executive officer of every trade union shall submit to the Commissioner a report concerning the financial affairs of the trade union during that financial year.
- (2) The report referred to in subsection (1) shall include information on the financial affairs of the trade union and there shall be appended to it—
  - (a) an audited balance sheet;
  - (b) an audited statement of revenue and expenditure; and
  - (c) such other information as the Commissioner may require.
- (3) An executive officer of a trade union who, without good cause, fails to comply with this section shall be guilty of an offence and liable, upon conviction, to a fine not exceeding two hundred penalty units and may be prohibited from holding office in any trade union for a period not exceeding five years.

*[As amended by Act [No. 13 of 1994](#)]*

## 22. Deduction of subscription by agreement

- (1) An employer may, by agreement with an eligible employee, deduct the amount of subscription prescribed by the constitution of the trade union from the wages of such eligible employee if the employee is a member of such trade union.
- (2) An eligible employee may, at any time, withdraw the agreement referred to in subsection (1), by giving three months notice, in writing, to the trade union concerned.
- (3) The Minister may, by statutory instrument, order an employer to deduct, at the end of each month, from the wages of an eligible employee, the subscription prescribed by the constitution of a trade union.
- (4) The Minister shall not make an order under subsection (3) unless he is satisfied that the number of eligible employees named in the order exceeds sixty per cent of the total number of employees.
- (5) The Minister shall inform the employer concerned before making the order under subsection (3).
- (6) The employer may make written submissions to the Minister objecting to the order within thirty days.
- (7) The Minister may accept or reject the submissions made to him.
- (8) An order made under subsection (3) shall apply to all eligible employees.
- (9) The Minister may make regulations to give effect to the provisions of this section.

## 23. Remittance of subscription

- (1) An employer shall, not later than fourteen days after the end of each month, remit the subscription in the manner prescribed in the agreement or the order.
- (2) An employer who fails to comply with an order made under section twenty-two shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding four hundred penalty units or to imprisonment for a term not exceeding six months, or to both.
- (3) Where an employer is convicted of an offence involving failure to remit subscriptions as required under section twenty-two, the court shall, in addition to any other penalty imposed by it, order the employer to pay to the trade union an amount equal to the subscription he failed to remit plus interest calculated at the ruling bank rate if the arrears are in excess of three months.



- (4) The amount referred to in subsection (3) shall be recovered as if it were an amount ordered by the court or paid as a civil debt.

*[As amended by Act [No. 13 of 1994](#)]*

## **24. Acquisition of land by trade unions**

A trade union may purchase or take on lease in the name of the trustee of the trade union any land and sell, exchange, mortgage or let the land, and no purchaser, assignee, mortgagee or tenant shall inquire whether the trustee has authority for the sale, exchange, mortgage or letting, and the receipt of the trustees shall be a valid discharge for the moneys arising therefrom.

## **25. Property of trade union to vest in trustees**

All real and personal property belonging to any trade union shall vest in trustees of the trade union, for the use and benefit of the trade union and the members.

## **26. Actions by or against trustees of trade unions**

The trustees of a trade union, or any other officer of the trade union, who may be authorised so to do by the constitution shall have power to bring or defend or cause to be brought or defended, any action, suit or proceedings, whether civil or criminal, as the case may be, in any court of law, concerning the property, or any right or claim to property of the trade union and shall have power in all cases concerning the real or personal property of the trade union, to sue and be sued in court, in their proper names, without other description than the title of their office.

## **27. Limitation of liability of trustees of trade unions**

A trustee of a trade union shall not be liable to make good any deficiency occurring in the funds of the trade union unless such deficiency occurred due to neglect or wilful default on the part of the trustee.

# **Part III – Zambia Congress of Trade Unions**

## **28. Continuation of Congress**

The Zambia Congress of Trade Unions established by, and registered in accordance with, section twenty-eight of the Industrial Relations Act, 1990, is hereby continued as if established, and registered under this Act.

*[Act [No. 36 of 1990](#)]*

## **29. Constitution of Congress**

- (1) The Constitution of the Congress in force immediately before the commencement of this Act continues in force until replaced or amended under this part.
- (2) The Constitution or any alteration or addition to the Constitution of the Congress shall be registered with the Commissioner.
- (3) The Constitution of the Congress shall include the provisions prescribed in the Schedule to this Act and in particular—
  - (a) a provision prescribing the entrance fees; and
  - (b) on any proposal to affiliate with any organisation or body outside Zambia.

### 30. Qualification and disqualification from election or appointment as officer of Congress

- (1) No person shall be qualified for election or appointment as an officer of the Congress if—
  - (a) he has been an officer, or a member of the executive, of a trade union the certificate of registration of which has been cancelled under section twelve and he fails to satisfy the Commissioner that he did not contribute to the circumstances leading to such cancellation or dissolution;
  - (b) he has been convicted of an offence involving dishonesty within five years preceding the election or appointment;
  - (c) he is an undischarged bankrupt;
  - (d) he is of unsound mind;
  - (e) he has been suspended, under this Act or under the Constitution of the Congress, from holding office in the Congress and his suspension has not been revoked, or the period for which he was suspended has not expired.
- (2) An officer of the Congress shall cease to hold office if any circumstances arise which would disqualify him under subsection (1) for election as an officer.
- (3) No person who is a full time officer of the Congress shall be a full time officer of any trade union.
- (4) The Commissioner may call for such documentation and information, as he may think necessary, from the executive committee or any officer of the Congress to ensure that the provisions of this section are complied with.
- (5) Any person disqualified under this section to hold office in the Congress who acts or purports to act as an officer of the Congress, shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding four hundred penalty units and may be prohibited from holding office in a trade union for a period determined by the Court.

*[As amended by Act [No. 13 of 1994](#)]*

### 31. Information about elections of Congress, etc

- (1) Where the Congress holds an election to fill any office in the Congress or makes an appointment to any office, the executive officer of the Congress shall, within thirty days of such election or appointment, notify the Federation and the Commissioner, in writing, of such appointment or of the result of such election, as the case may be.
- (2) Failure to comply with subsection (1) shall render the executive officer of the Congress guilty of an offence and liable upon conviction, to a fine not exceeding ten penalty units for every day during which such failure continues.
- (3) The name and office of every office holder and trustee of the Congress shall be exhibited in a prominent place, where possible, at the registered office, and at every registered office of the affiliates of the Congress.

*[As amended by Act [\[No. 13 of 1994\]](#)]*

### 32. Injunction against officer or Congress

Any member or officer of a trade union affiliated to the Congress may apply to the Court for an injunction prohibiting an officer of the Congress from holding office or dealing with the funds of the Congress, and the Court may, if it is satisfied that such officer of the Congress is disqualified under section thirty-one from holding office in the Congress or that there is a pending case against such officer for the fraudulent misuse of the funds of the Congress, grant such application and make the necessary order.

**33. Annual report of accounts of Congress**

Section twenty-one shall apply, with the necessary modifications, to the Congress and its Secretary-General.

**34. Relations between Congress and trade unions**

- (1) Notwithstanding the other provisions of this Act relating to the affiliation of trade unions to the Congress, each trade union shall maintain its separate status and shall have the right to organise itself as it considers fit in accordance with its constitution.
- (2) The Congress shall have no jurisdiction over any trade union affiliated to it in any domestic management or domestic matter unless such matter has been referred to the Congress by the trade union.
- (3) A trade union or the Congress may affiliate to a trade union or organisation outside Zambia by a simple majority decision of the members present and voting at a general conference of the trade union or Congress and shall inform the Commissioner within twenty-one days of such affiliation.
- (4) A trade union or the Congress may receive outside material, technical or financial assistance and shall inform the Minister of such assistance within thirty days of such receipt.
- (5) Subject to the other provisions of this Act, the Congress shall have general jurisdiction over trade unions affiliated to it, on—
  - (a) any issue requiring adoption of a common policy position affecting the affiliated trade unions;
  - (b) the provision of professional and technical advisers to trade unions involved in negotiations with employers associations or litigation; and
  - (c) the submission of such information, data, documentation, annual reports and financial statements as Congress may stipulate from time to time.

**35. Dispute between trade unions**

- (1) Where a dispute arises between two or more trade unions affiliated to the Congress, the parties to that dispute shall refer the dispute to the Congress for resolution by reconciliation.
- (2) If the Congress fails to resolve the dispute, such dispute shall be referred to the Minister for arbitration, subject to appeal to the Court.
- (3) Where the dispute involves trade unions not affiliated to the Congress, or any party to that dispute is not affiliated to the Congress, the parties to the dispute shall refer the dispute to the Minister for arbitration, subject to appeal to the Court.

**Part IV – Employers' associations****36. Registration and consequences of non-registration of employers' associations**

- (1) Every association shall be registered with the Commissioner under this Act within six months from the date of its formation.
- (2) If the Commissioner refuses to register an association, the association shall be dissolved within six months from the date of the notification of the refusal to register—

### 37. Rights of employers

- (1) Subject to this Act—
  - (a) employers shall have the right to participate in the formation of, and to join, an association and to participate in the lawful activities of such association;
  - (b) nothing contained in any law shall prohibit any employer from being or becoming a member of any association lawfully in being or subject the employer to any penalty by reason of the employers' membership of any such association;
  - (c) no person shall impede, interfere with, or coerce, an employer in the exercise of his rights under this Act;
  - (d) no person shall subject an employer to any form of discrimination on the ground that the employer is or is not a member of any association;
  - (e) no person shall subject another person to any form of discrimination on the ground that the person holds office in an association; and
  - (f) no person shall impede or interfere with the lawful establishment administration or functioning of an association.
- (2) No employee shall cease or suspend doing work for his employer on the ground that the employer—
  - (a) is or is not a member or holds or does not hold office, in an association;
  - (b) participates in the lawful activities of an association;
  - (c) has appeared as a complainant or as a witness or has given evidence in any proceedings before the Court or any other court; or
  - (d) is or has become entitled to any advantage, award, benefit or compensation in consequence of a decision made by the Court or any other court in favour of the employer, or in favour of an association or class or category of employers to which such employer belongs, either against such employee or against the trade union or class or category of employees to which such employee belongs or against any other person.
- (3) Any person who contravenes any provisions of this section shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding four hundred penalty units and may be prohibited from holding office in a trade union for such period as the Court may determine.

*[As amended by Act [No. 13 of 1994](#)]*

### 38. Employers' associations

- (1) Every officer of an association which is not registered or dissolved in accordance with section thirty-six, as the case may be, shall be guilty of an offence and liable upon conviction, to a fine not exceeding twenty penalty units for every day that the association remains unregistered or, undissolved, as the case may be, after the expiration of the period specified in section thirty-six; and in addition, every such officer may be prohibited from holding office of any association for a period determined by the Court.

*[As amended by Act [No. 13 of 1994](#)]*

### 39. Acts or unregistered associations and their officers

- (1) No association shall perform any act in furtherance of the objects for which it has been formed unless the association is registered under this Act.

Provided that an association and its constitution registered under the Industrial Relations Act, 1990 shall be deemed to be registered under this Act.

[No. 36 of 1990]

- (2) Any association which, or officer who, contravenes subsection (1), shall be guilty of an offence and liable, upon conviction, to a fine not exceeding two hundred penalty units; and the officer may in addition be prohibited from holding office in any association for a period determined by the Court.

[As amended by Act No. 13 of 1994]

#### 40. Application for registration of association

- (1) Subject to subsection (3), an application by not less than five members of an association may be made to the Commissioner for the registration of the association:

Provided that the Commissioner may accept an application by less than five employers or class of employers to form an association.

- (2) Every application to register an association and its constitution shall be—
  - (a) submitted to the Commissioner in the prescribed form; and
  - (b) accompanied by a copy of the constitution.
- (3) Notice of every application for the registration of an association shall be published in three consecutive issues of the *Gazette*.
- (4) Objections to the registration of any association shall be in writing and shall be lodged with the Commissioner not later than ninety days from the last notice appearing in the *Gazette*.
- (5) Subject to subsection (7), the Commissioner, upon being satisfied that an association has complied with the provisions relating to registration under this Act, and that the constitution of the association provides for the matters prescribed under section forty-two, shall register the association and its constitution and issue a certificate of registration in the prescribed form to the association, unless, in his opinion, any of the principal objects of the constitution of the association is unlawful or the association is incapable of implementing any of its principal objects.
- (6) A certificate of registration issued under subsection (5), unless proved to have been withdrawn or cancelled, shall be *prima facie* evidence that the provisions of this Act relating to registration have been complied with.
- (7) No association shall be registered—
  - (a) under a name identical to or by which any other association has been registered or so nearly resembles that name that it is likely to deceive members of the public; or
  - (b) if it does not comply with the conditions of registration.

#### 41. Continuation of associations

Every association established by, and registered in accordance with, section thirty-nine of the Industrial Relations Act, 1990, is hereby continued as if established and registered under this Act.

[Act No. 36 of 1990]

#### 42. Constitution of associations

- (1) The constitution of every association in force immediately before the commencement of this Act shall continue in force until replaced or amended under this section.

- (2) The constitution of every association shall include the provisions prescribed in the schedule to this Act and in particular a provision to use funds of the association for the holding of employers industrial relations seminars aimed at educating employers on the methods of maintaining harmonious and productive industrial relations between employers and trade unions.
- (3) An alteration or addition to the constitution of an association shall be registered with the Commissioner and shall take effect from the date of registration unless a later date for that purpose is specified in its constitution.
- (4) An application for registration of an alteration or addition to any provision of the constitution shall be registered with the Commissioner and shall be accompanied by an authenticated copy of the resolution made to alter or add to any provision of the constitution.
- (5) The constitution of an association shall not be altered or added to so that it fails in any material way to provide for the matters specified in this section.

#### **43. Disqualification from election or appointment as officer of association**

- (1) No person shall be qualified for election as an officer of an association if—
  - (a) he, or a member of the executive, of an association the certificate of registration of which has been cancelled under this Act, fails to satisfy the Commissioner that he did not contribute to the circumstances leading to the cancellation;
  - (b) he has been convicted of an offence involving dishonesty within a period of five years preceding such election;
  - (c) he is of unsound mind;
  - (d) he is an undischarged bankrupt; or
  - (e) he has been suspended, under this Act or the constitution of the association, from holding office in the association and his suspension has not been revoked, or the period for which he was suspended has not expired.
- (2) An officer of an association shall cease to hold office if circumstances arise which would disqualify him under subsection (1) for election as an officer.
- (3) No person who is a full-time officer of an association shall be a full-time officer of any other association or Federation unless he resigns from his first office.
- (4) The Commissioner may call for such documentation and information which he considers necessary from the executive committee or any officer of an association to ensure that the provisions of this section are being complied with.
- (5) Any person who being disqualified under this section to hold office in any association, acts or purports to act as an officer of that association shall be guilty of an offence and liable upon conviction, to a fine not exceeding four hundred penalty units and may be prohibited from holding office in any association for such period as the court may determine.

*[As amended by Act [No. 13 of 1994](#)]*

#### **44. Information about elections of association, etc**

- (1) Where an association holds an election to fill any office in the association or makes an appointment to any office, the executive officer of the association shall, within thirty days of the election or appointment, notify the Commissioner and the Federation if the association is affiliated to it in writing, of the result of the election, or of the appointment, as the case may be.
- (2) An executive officer who fails to comply with subsection (1) shall be guilty of an offence and liable, upon conviction to a fine not exceeding ten penalty units for every day during which the failure continues.

- (3) The name and office of every office holder and trustee of the association shall be exhibited in a prominent place at the registered office, and at every branch of the association.

*[As amended by Act [No. 13 of 1994](#)]*

#### **45. Injunction against officer of association**

- (1) Any member or officer, of an association, or any officer of the Federation, if the association is affiliated to it, may apply to the Court for an injunction prohibiting an officer of the association from holding or continuing to hold office or dealing, or continuing to deal, with the funds of the association.
- (2) On an application made under subsection (1), the Court may, if it is satisfied that the officer is disqualified under section forty-three from holding office in that association, or that there is a pending case against the officer for the fraudulent misuse of the association's funds, grant the application and make the necessary order.

#### **46. Cancellation of certificate of registration**

- (1) The Commissioner may, with the approval of the Minister, cancel the certificate of registration of an association—
  - (a) at the request of the association which has resolved to be dissolved and the application has been made in the prescribed form;
  - (b) if the certificate of registration has been obtained by fraud or mistake; or
  - (c) if the association has wilfully violated any of the provisions of this Act.
- (2) Where the Commissioner intends to cancel the certificate of registration of an association under paragraphs (b) or (c) of subsection (1), he shall at least three months before cancelling the certificate, give notice to the association concerned, specifying the grounds upon which he intends to rely for the intended cancellation.
- (3) The association referred to in subsection (2) may make representations to the Commissioner in opposition to the grounds contained in the notice.
- (4) The Commissioner may, after the receipt from the association of representations, if any, and after the expiration of the three months notice, cancel the certificate of registration and shall notify the association accordingly.
- (5) An association whose certificate of registration is cancelled may appeal to the Court.
- (6) An association whose certificate of registration is cancelled shall from the time of the cancellation cease to operate as an association and shall be dissolved unless an appeal against the cancellation is preferred:

Provided that in the case of any cancellation other than a cancellation made under paragraphs (a) and (c) of subsection (1), in respect of which no appeal is preferred to the Court, the cancellation shall not have effect until it is referred to the Court for confirmation.

#### **47. Appeal from decisions of Commissioner**

- (1) Any person aggrieved by a refusal of the Commissioner to register an employers' association, or by the cancellation of a certificate of registration, may appeal to the Court within thirty days of the notification of refusal, decision or cancellation, as the case may be.
- (2) The Commissioner shall be entitled to appear and to be heard on any appeal made under subsection (1).

- (3) The Chairman may make rules governing appeals, provide for the method of tendering evidence, prescribe the procedure to be followed, the fees to be paid, and notices to be given to the Commissioner.

#### **48. Change of name or address of association**

- (1) Subject to subsection (7) of section forty an association may, in accordance with the provisions of its constitution, change its name.
- (2) Notice in writing of every change of name, signed by all the members of the executive committee of an association shall be submitted to the Commissioner within thirty days of the change and the Commissioner shall register the change of name if he is satisfied that the change complies with subsection (1).
- (3) No change of name shall affect any right or obligation of an association or of any member of the association, and any legal proceedings in respect of the right or obligation of the association may be commenced or continued, if pending, by or against the trustees of the association or any other officer who may sue or be sued on behalf of the association, notwithstanding its new name.
- (4) Notice in writing of every change in the address of the registered office of an association shall be sent by its executive officer to the Commissioner for registration within thirty days of the change of address.
- (5) Failure to send a notice as required by subsection (2) or (4), shall render the association and its executive officer liable, upon conviction, to a fine not exceeding twenty penalty units each for every day during which the failure continues.

*[As amended by Act [No. 13 of 1994](#)]*

#### **49. Amalgamation of associations**

- (1) Two or more associations may amalgamate as one association and the new association shall be registered in accordance with this Act.
- (2) Any legal proceedings in respect of any rights or obligations of an association which has amalgamated with another association may be commenced or be continued, if pending, by or against the association formed as a result of the amalgamation.

#### **50. Voluntary dissolution of association**

- (1) Where an association is to be dissolved voluntarily, a notice of the intention to dissolve the association signed by all the members of the executive of the association and an authenticated copy of the minutes and resolution passed making the decision shall be submitted to the Commissioner with a copy to the Federation, if the association is affiliated to it, which may comment on the intended dissolution within fourteen days of receipt of the notice.
- (2) If the Commissioner is satisfied that the intended dissolution of an association is in accordance with its constitution he may approve the dissolution of the association and the dissolution shall be effective from the date the Commissioner accords his approval.
- (3) The Commissioner shall notify his approval to the association and the Federation, if the association is affiliated to it.
- (4) Where an association is dissolved under subsection (2) or dissolved under section forty-six—
  - (a) the property of the association shall vest in the liquidator appointed by the Commissioner who shall have all the powers to recover, realise and dispose of the property as a trustee in bankruptcy has in relation to a bankrupt's property under the Bankruptcy Act and Part V of



the Bankruptcy Act relating to remuneration and costs with the necessary modifications, shall apply to such liquidator;

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- (b) the liquidator shall wind up the affairs of the association and, after satisfying and providing for all the debts or other liabilities, prepare a scheme for the application of its remaining assets or property for purposes likely to benefit the former members of the dissolved association, or distribute the assets or property or the proceeds among such of its former members as the Commissioner may determine.
- (5) No suit or proceeding shall be instituted against the liquidator appointed by the Commissioner for or in respect of anything done or omitted to be done by him in the performance of his functions under this Act.

## **51. Affiliation of association to Federation**

- (1) From the commencement of this Act—
  - (a) an association which holds a valid certificate of registration issued under the Industrial Relations Act, 1990 and which was affiliated to the Federation prior to that Act, shall continue to be affiliated to the Federation under this Act; and
  - (b) an association affiliated to the Federation shall by a simple majority decision of the members present and voting at a general conference, cease to be affiliated to the Federation.
- (2) An association registered under this Act may be affiliated to the Federation by a simple majority decision of the members present and voting at the general conference of that association.
- (3) An association affiliated to the Federation under paragraph (b) of subsection (1) shall, on such affiliation have rights and privileges, and be subject to the obligations specified in the Constitution of the Federation.

*[Act No. 36 of 1990]*

## **52. Annual report of accounts of association**

Section twenty-one shall apply, with the necessary modifications, to an association or executive officer as it applies to a trade union and its executive officer.

## **53. Acquisition of land by association and vesting of property**

Section twenty-five shall apply, with the necessary modifications, to an association and its trustees as it applies to a trade union and its trustees.

## **54. Actions by or against trustees of association and limitation of their liability**

Sections twenty-six and twenty-seven shall apply, with the necessary modifications, to an association and its trustees as they apply to a trade union and its trustees.

# **Part V – Zambia Federation of Employers**

## **55. Continuation of Federation**

The Zambia Federation of Employers established by, and registered in accordance with, section fifty-six of the Industrial Relations Act, 1990, is hereby continued as if established and registered under this Act.

*[Act No. 36 of 1990]*

## 56. Continuation of Federation

- (1) The Constitution of the Federation in force immediately before the commencement of this Act shall continue in force until replaced or amended under this section.
- (2) The Constitution of the Federation and every alteration or addition to the Constitution shall be registered with the Commissioner.
- (3) The Constitution of the Federation shall include the provisions prescribed in the Schedule to this Act and in particular—
  - (a) a provision for prescribing the entrance fees; and
  - (b) any proposal to affiliate with any organisation or body outside Zambia.

## 57. Relations between Federation and employers' associations

Section thirty-four shall apply to the relationship between the Federation and associations, with the necessary modifications, as it applies to the Congress and trade unions.

## 58. Disqualification from election or appointment as officer of Federation

- (1) No person shall be qualified for election as an officer of the Federation if—
  - (a) he has not, for three years or more, been an officer of an association or engaged in a managerial capacity or in the field of personnel management or industrial relations:  

Provided that the Federation may, if it is satisfied as to the suitability of a particular candidate, allow him to stand for such election, notwithstanding that he does not qualify under this paragraph;
  - (b) he, having been an officer or a member of the executive of any association, the registration of which has been cancelled under the provisions of this Act, fails to satisfy the Commissioner that he did not contribute to the circumstances leading to the cancellation;
  - (c) he has been convicted of an offence involving dishonesty within a period of five years preceding the election or appointment;
  - (d) he is an undischarged bankrupt;
  - (e) he is of unsound mind; or
  - (f) he has been suspended, under the Constitution of the Federation, from holding office in the Federation and his suspension has not been revoked, or the period for which he was suspended has not expired.
- (2) An officer of the Federation shall cease to hold office if any circumstances arise which would disqualify him under subsection (1) for election as an officer.
- (3) The Commissioner shall, for the purpose of satisfying himself that the provisions of this section are being complied with, request for such documentation or information, as he may think necessary, from the executive officer of the Federation.
- (4) Any person who, being disqualified under this section from holding office in the Federation, acts or purports to act as an officer of the Federation shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding four hundred penalty units and may be prohibited from holding office in the Federation for a period determined by the Court.

*[As amended by Act [No. 13 of 1994](#)]*

## 59. Notification of results of election of Federation

- (1) Where the Federation holds an election to fill any office in the Federation or makes appointment to any office, the executive officer of the Federation shall, within thirty days of the election or appointment, notify the Commissioner and the Congress, in writing, of the appointment or of the result of the election, as the case may be.
- (2) Any executive officer who fails to comply with subsection (1) shall be guilty of an offence and liable upon conviction, to a fine not exceeding ten penalty units for every day during which such failure continues.
- (3) The name and office of every office holder and trustee of the Federation shall be exhibited in a prominent place at the registered office, where possible, and at every registered office of the affiliates of the Federation.

*[As amended by Act [No. 13 of 1994](#)]*

## 60. Annual report or accounts of Federation

Section twenty-one shall apply, with the necessary modifications, to the Federation and its executive officer as it applies to a trade union and its executive officer.

## Part VI – Funds of trade unions, Congress, association and Federation

### 61. Objectives for which funds shall not be expended

- (1) Notwithstanding anything contained in the constitution of a trade union, the Congress, an association or the Federation, the funds of a trade union, the Congress, an association or the Federation, shall be expended for the lawful objects authorised under the constitution of the trade union, Congress, association or Federation.
- (2) Any member of, a trade union, the Congress, an association or the Federation may apply to the Court for a declaration to stop a trade union, the Congress, an association or the Federation from applying its funds to objects which in his opinion have not been authorised by its constitution.

### 62. Control of funds

- (1) Subject to subsection (3), every treasurer, former treasurer, or other officer of, a trade union, the Congress, an association or the Federation, shall, at such times as he is required by the constitution of the trade union, Congress, association or Federation or upon being requested to do so, submit to the trustees or the members of the trade union, Congress, association or Federation at a meeting of the trade union, Congress, association or Federation, a true account of—
  - (a) all monies received and disbursed by him; and
  - (b) the balance of monies in hand;Provided that in the case of a former treasurer—
  - (i) the duty to submit an account of monies received and disbursed by him shall only apply to him within thirty days of his ceasing to hold office; and
  - (ii) paragraph (b) shall not apply to him.
- (2) The trustees of a trade union, the Congress, an association of the Federation, shall, on receipt of the account submitted under subsection (1), cause the account to be audited by an auditor appointed by them.

- (3) Notwithstanding subsection (1) or the constitution of, a trade union, the Congress, an association or the Federation, a trade union, the Congress, an association or the Federation may appoint an accountant and the name and address of the person so appointed shall, as soon as practicable thereafter, be published in the *Gazette*.
- (4) Where an accountant has been appointed under subsection (1)- the accountant shall—
  - (a) have access at all reasonable times to all books of account, records, returns, reports and other documents relating to the transactions of a trade union, the Congress, an association or the Federation.
  - (b) submit the accounts for audit or inspection, if so required by the Commissioner, and furnish all other information relating to the transactions of a trade union, the Congress, an association or the Federation;
  - (c) debit the accounts of a trade union, the Congress, an association or the Federation with his professional fees and expenses reasonably incurred in the performance of his functions.
- (5) In the event of the accountant ceasing to hold office, he shall hand over to the executive officer all monies, securities, books, documents, papers and other things in his possession and belonging to, or held by him on behalf of, the trade union, Congress, association or Federation.
- (6) Any person who wilfully obstructs the accountant in the performance of his functions under this section shall be guilty of an offence and liable, upon conviction, to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

*[As amended by Act [No. 13 of 1994](#)]*

## **Part VII – Recognition agreements**

### **63. Registration of lesser employers**

- (1) Every employer employing twenty-five or more eligible employees, or such number as may be prescribed by the Minister, shall register himself with the Commissioner within a period not exceeding three months from the date of coming into operation of this section or, from the date upon which this section becomes applicable to the employer, as the case may be.
- (2) The registration shall be in the manner and in the form as may be prescribed:  
  
Provided that an employer registered under the Industrial Relations Act, 1990, shall be deemed to be registered under this Act.
- (3) An employer to whom this section applies and who fails without reasonable cause or excuse, (the onus of proof shall lie on the employer), to register in accordance with this section shall be guilty of an offence and liable, upon conviction, to a fine not exceeding two hundred penalty units

*[As amended by Act [No. 13 of 1994](#)]*

### **64. Duty to enter into agreement**

- (1) Not later than three months from the date of coming into operation of this part or from the date upon which this section becomes applicable to any employer, the recognition employer registered under section sixty-three and the trade union, if any, to which the employees employed by the employer belong, shall enter into a recognition agreement.
- (2) Not later than three months from the date of coming into operation of this part or from the date upon which an association and a trade union have become established in an industry, the association and the trade union shall enter into a recognition agreement.

- (3) The Minister may, for good cause, extend the period laid down in subsection (1) and (2).
- (4) A recognition agreement registered under the Industrial Relations Act, 1990, shall be deemed to be registered under this Act.

*[Act No. 36 of 1990]*

- (5) Where the parties referred to in subsection (1) or (2), fail to conclude a recognition agreement under this Part, the failure shall be deemed to be a collective dispute and Part IX shall apply, with the necessary modifications.

## **65. Essentials of recognition agreement**

- (1) Every recognition agreement shall be in writing, signed by the representatives of the parties to it and shall provide—
  - (a) that the employer or association has recognised the trade union as the sole representative of, and exclusive bargaining agent for, eligible employees represented by the trade union so recognised employed by the employer or the members of such association for the purpose of regulating the collective relationship of the employers or association and the trade union;
  - (b) for the methods, remedies and rules relating to procedures, and for the settling of disputes or the remedying of grievances by means of collective bargaining between the employer or association or trade union; and
  - (c) for the methods, procedures and rules under which the agreement may be reviewed, amended, replaced or terminated.
- (2) Three copies of a recognition agreement and of any alterations to the agreement shall be delivered to the Commissioner by the parties to the agreement.
- (3) The Commissioner may, if satisfied that all the conditions of the recognition agreement have been met, register the agreement and shall return a copy each to the parties concerned.

## **Part VIII – Joint councils and collective agreements**

### **66. Establishment of joint council**

- (1) Within three months from the date of coming into operation of this section or the formation of an association whichever is the later, every association and trade union shall establish a joint council within and for the industry with which the association is concerned:

Provided that every joint council established under the Industrial Relations Act, 1990, shall be deemed to be a joint council established under this Act.

*[Act No. 36 of 1990]*

- (2) Where the association and the trade union concerned fail or neglect without reasonable cause or excuse (the onus of proof shall lie on the association and trade union) to establish a joint council in the manner and within the period specified in subsection (1), every officer of the association and trade union shall be liable upon conviction, to a fine not exceeding two hundred penalty units.

*[As amended by Act No. 13 of 1994]*

### **67. Constitution of joint council**

- (1) The constitution of a joint council shall include provisions—
  - (a) for the composition of its membership;
  - (b) for the rules governing the joint council; and

- (c) that the joint council shall hold its meetings at least once in every three months.
- (2) Every joint council shall, within fifteen days of its establishment, deliver a copy of its constitution to the Commissioner.

## 68. Collective agreements

Every collective agreement shall contain clauses, in this part referred to as statutory clauses, stipulating—

- (a) the date on which the agreement is to come into effect and the period for which it is to remain in force; and
- (b) the methods, procedures and rules for reviewing, amending, replacing or terminating the collective agreement.

## 69. Obligations of bargaining unit

- (1) The bargaining unit shall—
  - (a) commence negotiations for the purpose of concluding a new collective agreement at least three months before the date of expiry of the current collective agreement;
  - (b) notify the Commissioner in writing, within fifteen days after the commencement of the negotiations, of the date on which the negotiations were commenced; and
  - (c) conclude and sign the collective agreement within three months after the commencement of the negotiations.
- (2) If the bargaining unit fails, or neglects without reasonable cause or excuse (the onus of proof shall lie on the bargaining unit) to commence negotiations or conclude the collective agreement in the manner and within the period specified in paragraphs (a) and (c) of subsection (1), or to notify the Commissioner in the manner and within the period specified in paragraph (b) of subsection (1), every member of the bargaining unit shall be liable, upon conviction, to a fine not exceeding forty penalty units and may be prohibited from holding a position in the bargaining unit for a period not exceeding three months.

*[As amended by Act [No. 13 of 1994](#)]*

## 70. Lodging of collective agreements

- (1) The parties to a collective agreement shall, within fourteen days of signing, lodge five signed copies of the collective agreement with the Commissioner.
- (2) The Commissioner shall, within fourteen days of receipt of the copies referred to in subsection (1), submit such copies, together with his comment to the Minister.

## 71. Approval of collective agreement

- (1) The Minister may, after considering a collective agreement lodged in accordance with section seventy-one together with the comments of the Commissioner received under subsection (2)—
  - (a) direct that a copy of the collective agreement be returned to the parties together with his reasons for not directing the registration and give instructions to re-submit the collective agreement to the Commissioner; or
  - (b) direct the Commissioner to register the collective agreement.
- (2) The Minister shall not direct the registration of a collective agreement unless he is satisfied that—
  - (a) the agreement contains the statutory clauses referred to in section sixty-eight; and
  - (b) the clauses in the agreement do not contain anything which is contrary to any written law.

- (3) Every collective agreement which has been approved by the Minister shall—
- (a) come into force on the date on which it is approved or on a later date specified in the collective agreement;
  - (b) remain in force for such period as shall be specified in the agreement;
  - (c) be binding on the parties to it, or in the case of a joint council, it shall bind every employer and employee engaged in the industry; and
  - (d) be notified in the *Gazette* if it is a collective agreement negotiated and concluded by a joint council.

## **72. Variation of collective agreement**

The parties to a collective agreement may by agreement vary the provisions of a collective agreement and the procedure set out in section seventy shall apply, with the necessary modifications, to the variation.

## **73. Extension of collective agreement in force**

- (1) Where a bargaining unit is unable to conclude a new collective agreement before the expiration of the existing collective agreement, or where for any other reason the bargaining unit desires to extend the period during which the existing collective agreement is to remain in force, it may apply to the Minister in that behalf.
- (2) An application under subsection (1) shall be made not less than thirty and not more than sixty days before the expiration of the existing collective agreement:  
  
Provided that the Minister may, consider an application made at any time before the expiration of the existing collective agreement.
- (3) Any extension of an existing collective agreement which was negotiated and concluded by a joint council shall be notified in the *Gazette*.

## **74. Collective agreements by joint councils**

A collective agreement concluded by a joint council shall bind every employer and employee engaged in the industry concerned notwithstanding that the employer or employee is not a member of the association or of the trade union concerned, or was not a party to the collective agreement:

Provided that nothing in this section shall preclude an employer from concluding a collective agreement directly with the appropriate trade union on terms and conditions which are not less favourable than those contained in the collective agreement concluded by the joint council.

# **Part IX – Settlement of collective disputes**

## **75. Collective disputes**

A collective dispute shall exist when there is a dispute between an employer or an organisation representing employers on the one hand and the employees or an organisation representing the employees on the other hand, relating to terms and conditions of, or affecting the employment of, the employees and one party to the dispute has presented in writing to the other party all its claims and demands and—

- (a) the other party has, within fourteen days from the date of receipt of the claims or demands, failed to answer the claims or demands; or
- (b) the other party has formally rejected the claims or demands and has made no counter offer; or

- (c) both the parties to the dispute have held at least one meeting with a view to negotiating a settlement of the dispute, but have failed to reach settlement on all or some of the matters in issue between them.

## **76. Dispute to be referred to conciliator, board of conciliation**

- (1) Where a collective dispute arises and neither of the parties to the dispute is engaged in an essential service, the parties to the dispute shall refer the dispute to—
  - (a) a conciliator appointed by the parties to the dispute; or
  - (b) a board of conciliation composed of—
    - (i) a conciliator appointed by the employer or an organisation representing employers;
    - (ii) a conciliator appointed by the employees or an organisation representing the employees; and
    - (iii) a conciliator appointed by the employer or the organisation representing the employers and employees or the organisation representing employees, who shall be the Chairman.
- (2) Where the parties to a collective dispute not engaged in an essential service fail to agree within a period of seven days from the date when the collective dispute arose on the appointment of a conciliator or of the Chairman, they shall inform the Commissioner accordingly.
- (3) The Commissioner on receipt of the information under subsection (2) shall request the Minister to appoint, within a period of seven days from the date of the request, a conciliator or Chairman of the board of conciliation from a list of names submitted and agreed upon by the representatives of employees and the representatives of employers.
- (4) The conciliator or the board of conciliation appointed under subsection (1) or subsection (3) shall, within seven days of his or its appointment, summon the parties to the collective dispute to a meeting and proceed to conciliate in the dispute.
- (5) Any party to a collective dispute or any agent or representative who refuses or neglects without reasonable cause or excuse (the onus of proof shall lie on such party) to attend a meeting summoned by the conciliator or board of conciliation shall be guilty of an offence.
- (6) Where a collective dispute arises and any of the parties to it are engaged in an essential service, the parties to the dispute shall refer the dispute to the Court.
- (7) Any person who commits an offence under subsection (5) shall, upon conviction, be liable—
  - (a) in the case of a body corporate, to a fine not exceeding one thousand penalty units;
  - (b) in any other case to a fine not exceeding four hundred penalty units.

*[As amended by Act [No. 13 of 1994](#)]*

## **77. Approval of settlement by conciliation**

- (1) As soon as a collective dispute is settled by means of conciliation, the conciliator or the Chairman of the Board of conciliation shall cause a memorandum of the terms of the settlement to be prepared which shall be signed by the parties to it and shall be witnessed by the conciliator or the Chairman and each member of the board of conciliation, as the case may be.
- (2) The conciliator or the Chairman of the board of conciliation, shall, within seven days of the settlement of a dispute by conciliation, submit authenticated copies of the memorandum referred to in subsection (1) to the Registrar.



- (3) The Registrar shall, as soon as possible after receipt of a copy of the memorandum refer it to the Court which shall, subject to the settlement embodied in the memorandum, if not contrary to any written law, approve the settlement.
- (4) If the Court decides that the settlement as a whole or any term of the settlement embodied in the memorandum is contrary to any written law, the Registrar shall communicate the decision of the Court to the parties to the dispute accordingly.

## **78. Failure to reach settlement by conciliation**

- (1) Where a conciliator or board of conciliation fails to settle a collective dispute the parties to the collective dispute may—
  - (a) refer it to the Court; or
  - (b) conduct a ballot to settle the dispute by a strike or lockout.
- (2) Where a collective dispute is referred to the Court under subsection (1) or under subsection (6) of section seventy-six the decision of the Court shall, subject to section ninety-seven be binding upon the parties to the dispute for such period as the Court may specify in the Order.
- (3) Where the parties, decide to proceed on strike or lockout, the parties shall not proceed on strike or lockout unless a simple majority decision of the employees present and voting is made by employees in favour of the strike or lockout.
- (4) The strike or lockout may, subject to section seventy-five, commence ten days following the decision to do so and may continue for an indefinite period during which the dispute remains unresolved.
- (5) The Minister may intervene before the commencement of the strike or lockout under subsection (4) to try and settle the dispute.
- (6) The Minister may, after consultation with the Tripartite Consultative Labour Council apply to the Court for a declaration that the continuance of the strike or lockout is not in the public interest.
- (7) The Court shall make a decision within seven days of the application for a declaration that the strike or lockout is not in the public interest.
- (8) Where the Court issues a declaration in favour of the application, the strike or lockout shall cease and the dispute shall be deemed to have been referred to the Court under paragraph (a) of subsection (1).
- (10) The Court shall have power to decide whether the workers on a legal strike should be eligible for payment of wages during the period of the strike.

*[Please note: numbering as in original.]*

## **Part X – Tripartite Consultative Labour Council**

### **79. Consultative Labour Council**

- (1) There is hereby constituted the Tripartite Consultative Labour Council, in this part referred to as the Council which shall consist of the Minister and such equal number of members representing the trade unions, the employers and the Government, as the Minister may determine but the members shall not be less than twenty-one.
- (2) The members representing—
  - (a) the trade unions shall be nominated by the Congress;
  - (b) the employers shall be nominated by the Federation; and

- (c) the Government shall be nominated by the Minister.
- (3) The Commissioner shall act as the secretary to the Council and any committee which may be formed by the Council.

#### **80. Chairman and Vice-Chairman of Council**

- (1) The Council shall be chaired by the Minister, or in his absence, the Deputy Minister responsible for labour.
- (2) There shall be two Vice-Chairmen of the council of which one shall be nominated by the Congress and the other nominated by the Federation.

#### **81. Proceedings of Consultative Council**

- (1) Subject to the other provisions of this Part, the Council may regulate its own procedure.
- (2) For the transaction of its business, the Council shall meet at least twice annually at such places and at such times, as the Chairman, in consultation with the trade unions and the associations, may determine.
- (3) A meeting of the Council may be called by giving notice of not less than fourteen days:  
Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving shorter notice.
- (4) At any meeting of the Council, one-half of the members shall form a quorum.
- (5) Decisions of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.
- (6) The Council may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Council but such person shall have no vote.
- (7) The validity of any proceedings, act or decision of the Council or any committee of the Council shall not be affected by any vacancy in the membership of the Council or committee of the Council, as the case may be, or by any defect in the appointment of any member or member of such committee or by reason that any person not entitled to do so took part in the proceedings.
- (8) The Government, trade unions and the association shall be responsible for paying allowances for the attendance of meetings of the Council, to their respective representatives.

#### **82. Committees of Council**

- (1) The council may establish any number of standing or adhoc committees to assist the Council in the performance of its functions.
- (2) The Council may appoint as members of a committee established under subsection (1), persons who are or are not members of the Council and such persons shall hold office for such period as the Council may determine.
- (3) Subject to any specific or general direction of the Council, a committee established under this section may regulate its own procedure.

#### **83. Functions of Council**

The functions of the Council shall be to advise the Government on all issues relating to labour matters, manpower development and utilisation and any other matter referred to the Council by the Government.

## Part XI – Industrial Relations Court

### 84. Continuation of Court

The Industrial Relations Court established by section sixty-four of the Industrial Relations Act, 1990, is hereby continued as if established under this Act.

*[Act No. 36 of 1990]*

### 85. Jurisdiction of Court

- (1) The Court shall have original jurisdiction in all industrial relations matters.
- (2) The court shall have jurisdiction—
  - (a) to inquire into and make awards and decisions in collective disputes and any other matters under this Act;
  - (b) to interpret the terms of awards, collective agreements and recognition agreements;
  - (c) generally to inquire into and adjudicate upon any matter affecting the collective rights, obligations and privileges of employees, employers and representative organisations or any matter relating to industrial relations;
  - (d) to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out, or to be bound by, an order made against him by the Court under this Act; and
  - (e) to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.
- (3) In this section "dispute" shall include differences concerning employment contracts between an employer and an employee arising from the terms and conditions of service.
- (4) The Court shall have the jurisdiction to hear and determine any dispute between any employer and an employee notwithstanding that such dispute is not connected with a collective agreement or other trade union matter.
- (5) The Court shall not be bound by the rules of evidence in civil or criminal proceedings, but the main object of the Court shall be to do substantial justice between the parties before it.
- (6) An award, declaration, decision or judgement of the Court on any matter referred to it for its decision or on any matter falling within its exclusive jurisdiction shall, subject to section ninety-seven, be binding on the parties to the matter and on any parties affected.
- (7) It shall be within the exclusive jurisdiction of the Court to resolve any ambiguity in any collective or recognition agreement brought to its notice by any of the parties concerned.
- (8) No person shall take part in a lockout or a strike against or in defiance of any award, declaration, decision or judgement of the Court and any person who contravenes this subsection shall be liable, upon conviction, to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding twelve months, or to both.

*[As amended by Act No. 13 of 1994]*

### 86. Composition of Court

- (1) The Court shall consist of the following members:
  - (a) a Chairman;
  - (b) Deputy Chairmen; and

- (c) not more than ten members as the Minister may appoint.
- (2) A person shall not be qualified for appointment as Chairman or Deputy Chairman, unless he qualifies to be appointed as High Court Judge.
- (3) The Chairman and Deputy Chairmen shall be appointed by the President on the recommendation of the Judicial Service Commission.
- (4) The members, other than the Chairman and Deputy Chairmen, shall hold office for a period of five years but shall be eligible for re-appointment.
- (5) The Chairman and Deputy Chairmen shall have the same tenure and security of Cap. 1 office as a judge of the High Court prescribed in the Constitution in the Article relating to tenure of office of judges of the Supreme and High Court and shall be subject to removal from office for inability to perform the functions of his office under that Article.

[Cap. 1]

## **87. Registrar and other officers of Court**

- (1) There shall be a Registrar and such Deputy Registrars and such Assistant Registrars, as may be necessary, who shall be public officers and who shall be appointed by the Judicial Service Commission.
- (2) The Judicial Service Commission may appoint such other officers of the Court, as may be necessary.

## **88. Assessors**

- (1) The Minister shall nominate an even number of persons, not exceeding fourteen, of whom one-half shall be representatives of employers and the other half of employees as assessors; and shall submit to the Chairman a list containing the address of such persons and indicating in each case whether the person is a representative of the employers or of the employees.
- (2) The Minister shall cause the list of persons and their addresses referred to in subsection (1) to be published in the *Gazette*.
- (3) From the list referred to in subsection (1), the person presiding may select one person who is a representative of the employers and one person who is a representative of the employees to sit as assessors, with the Court in the hearing of any matter before it.
- (4) The court shall give due consideration to, but shall not be bound by, the opinion of the assessors.

## **89. Proceedings of Court**

- (1) The Chairman or a Deputy Chairman shall preside over the Court.
- (2) The court, when hearing any matter, shall be duly constituted if it consists of three members or such uneven number as the Chairman may direct:  
  
Provided that the Chairman or a Deputy Chairman may deal with interlocutory matters and deliver a ruling or make any order in chambers and may deliver any ruling or judgement made by the Court duly constituted.
- (3) Subject to subsection (2), the determination of any matter before the Court shall be according to the opinion of the majority of the members of the Court considering or hearing the matter:  
  
Provided that on a point of law the decision of the Chairman or the Deputy Chairman shall prevail.
- (4) A person shall not sit or act as a member of the Court or sit as an assessor with the Court, if he has any interest direct or indirect, personal or pecuniary, in any matter before the Court.
- (5) The sittings of the Court shall be held in such places as the Chairman may direct.

## 90. Declaration by Court

- (1) The court may, on application, declare who is or should be the holder of any office in a trade union, the Congress, an association or the Federation.
- (2) The Chairman may make rules providing for the procedure to be followed on an application for a declaration under this section and prescribing any fees which shall be payable on any application.
- (3) Without prejudice to the power of the Court to punish for contempt of court, where it has been declared under subsection (1) that any person is or should be the holder of an office, any other person who acts or purports to act as the holder of the office contrary to the terms of the declaration, shall be liable upon conviction, to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

*[As amended by Act [No. 13 of 1994](#)]*

## 91. Representation of parties

- (1) At any hearing before the Court, any party may appear in person or be represented—
  - (a) by any officer of a trade union or of an association;
  - (b) by an officer of the Congress or of the Federation; or
  - (c) by a legal practitioner;

in any proceedings before the Court, the Government may be represented by the Attorney-General or by any other person authorised by him for that purpose.

## 92. Powers to summon witnesses

- (1) The court may summon witnesses, call for the production and inspection of, books, documents, records and other things, and to examine witnesses.
- (2) A summons for the attendance of a witness or for the production of books, documents, records or other things shall be signed by the Registrar or Deputy Registrar and served in the same manner as if it were a subpoena for the attendance of a witness at a civil trial in the High Court.
- (3) Any person giving evidence or summoned to give evidence or to produce any book, document, record or other thing before the Court, shall be entitled to the same privileges and immunities as if he were summoned to attend or were giving evidence in civil proceedings before the High Court.
- (4) A person summoned under this section, other than a public officer or a person having an interest in the proceedings for which he is summoned, may on the order of the Court be paid from moneys appropriated by Parliament such allowances as may be prescribed by the Chairman.

## 93. Power to obtain evidence

- (1) If any person who has been summoned under section ninety-two having reasonable notice of the time and place at which he is required to attend, fails to attend, or fails to remain in attendance until duly excused by the Court from further attendance, the Chairman or Deputy Chairman may, upon being satisfied by the return of the person charged with the service of the summons, that the summons was duly served upon such person, issue a warrant signed by him for the apprehension of the person.
- (2) A person against whom a warrant has been issued under subsection (1), shall be apprehended by any police officer to whom the warrant is delivered and shall be brought before the Court to give evidence or to produce a book, document, record or other thing.

- (3) If any person who has been summoned under section ninety-two—
- (a) refuses to be sworn or affirmed as a witness;
  - (b) having been sworn or affirmed refuses to answer fully and satisfactorily any question he is lawfully required to answer; or
  - (c) refuses or fails to produce any book, document, record or other thing and does not excuse his refusal or failure to the satisfaction of the Court;

the Chairman or Deputy Chairman may order that person to be detained in custody, as if he were a prisoner awaiting trial, for any period not exceeding eight days unless he sooner consents to do what is required of him.

- (4) Where the person referred to in subsection (3), upon being brought before the Court at an adjourned hearing, further refuses or fails to do what is required of him, the Chairman or Deputy Chairman may, if he sees it fit, adjourn the proceedings and order that person to be detained for a like period until the person consents to do what is required of him.

#### **94. Judgment of Court**

- (1) The Court shall deliver judgment within sixty days after the hearing of the case.
- (2) Failure to deliver judgment, within the period stipulated in subsection (1) shall amount to inability by the Chairman or Deputy Chairman to perform the functions of his office and the provisions of the Constitution in dealing with the inability by a judge to perform his functions under the Constitution shall apply.

*[Cap. 1]*

#### **95. Publication of judgments of Court**

- (1) The Registrar or Deputy Registrar shall cause every award, decision or judgment of the Court to be communicated to the parties concerned and to the Commissioner.
- (2) The Chairman may cause to be published in the *Gazette* any award, decision or judgment of the Court which, in his opinion, is of general interest.

#### **96. Rules of Court**

The Chairman shall, by statutory instrument, make rules regulating the procedure of the Court.

#### **97. Appeals to Supreme Court**

Any person aggrieved by any award, declaration, decision or judgment of the Court may appeal to the Supreme Court on any point of law or any point of mixed law and fact.

### **Part XII – General**

#### **98. Immunity of officials of trade unions, congress, associations and Federation**

An act done by a person in contemplation or furtherance of a collective dispute shall not be actionable on the ground that it induces some other person to break a contract of employment, or that it interferes, with the trade, business or employment of some other person, or with the right of that other person to dispose of his capital or labour as he wishes.

**99. Conspiracy in collective disputes**

- (1) An agreement by two or more persons to do, or procure to be done, any act in contemplation or furtherance of a collective dispute shall not be punishable as a conspiracy if such act when committed by one person would not be punishable as a crime.
- (2) An act done in pursuance of an agreement by two or more persons shall not, if done in contemplation or furtherance of a collective dispute, be actionable unless the act, if done without any such agreement would be actionable.
- (3) Nothing in this section shall—
  - (a) affect the law relating to conspiracy for which punishment is prescribed by any law in force in the Republic; or
  - (b) affect the law relating to riot, unlawful assembly, breach of the peace, or sedition.

**100. Breach of contract involving injury to persons or property**

- (1) Where any person or in combination with others wilfully break a contract of service or of hire, knowing or having reasonable cause to believe that the probable consequence of their so doing will endanger human life or cause serious bodily injury or expose any property, whether real or personal, to destruction or serious injury, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding four hundred penalty units or to imprisonment for a term not exceeding six months, or to both.
- (2) No prosecution under this section shall be brought except by, or with the written consent of, the Director of Public Prosecutions.

*[As amended by Act [No. 13 of 1994](#)]*

**101. Prohibition from participation in lockouts or strikes**

- (1) No employer or other person shall take part in a lockout which is not in contemplation or furtherance of a collective dispute to which the employer or that person is a party.
- (2) No employee, trade union or other person shall take part in a strike which—
  - (a) has not been authorised by a strike ballot taken in the manner provided by the constitution of a trade union under this Act; or
  - (b) is not in contemplation or furtherance of a collective dispute to which the employee or trade union is a party.
- (3) Any employer or other person who does any act in contravention of subsection (1), shall be liable, upon conviction—
  - (a) in the case of a body corporate, to a fine not exceeding one thousand penalty units
  - (b) in any other case to a fine not exceeding four hundred penalty units.
- (4) Any employee, trade union or other person who does any act or incites any person to do any act in contravention of subsection (2), shall be guilty of an offence and shall be liable upon conviction—
  - (a) in the case of the trade union, to a fine not exceeding one thousand penalty units; or
  - (b) in the case of an employee or other person, to a fine not exceeding four hundred penalty units and may be prohibited from holding office in a trade union for such period as the Court may determine.

*[As amended by Act [No. 13 of 1994](#)]*

**102. Attendance at or near place of residence, business or employment for certain purposes**

- (1) Any person acting on behalf of a trade union or the Congress in contemplation or furtherance of the settlement of a collective dispute may attend at or near a place not being a dwelling house, where a person works or carries on business, for the purpose of peacefully persuading an employee or an employer involved in the collective dispute to take part in a lawful demonstration:

Provided that no person shall intimidate that other person or any other person in that place or obstruct the approach thereto or egress therefrom.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence.

**103. Attendance at or near place of residence**

- (1) Any person acting in contemplation or furtherance of the settlement of a collective dispute may attend, at or near a dwelling house or place where another person resides or happens to be, for the purpose of peacefully obtaining or communicating information or of persuading or inducing the other person to take part in a strike or a demonstration:

Provided that no person shall intimidate that other person in that place.

- (2) Any person who contravenes subsection (1) shall be charged with the offence of watching and besetting such house or place wrongfully and without legal authority within the meaning of subsection (1) of section one hundred and seventy-three of the Penal Code, and shall be liable, upon conviction, to a fine not exceeding four hundred penalty units or to imprisonment for a term not exceeding six months or to both.

[As amended by Act [No. 13 of 1994](#)]

[Cap. 87]

**104. Obstructing Commissioner, etc**

Any person who wilfully obstructs or hinders the Commissioner, or any other person, in the exercise of any of his powers under this Act shall be liable, upon conviction, to a fine not exceeding four hundred penalty units and may be prohibited from holding office in a trade union or association for such period as the Court may determine.

**105. Prosecution of offences**

All offences under this Act may be prosecuted before a subordinate court of the first or second class.

**106. General penalty**

Any person who does any act prohibited by this Act or who omits to do any act which he is required to do under this Act shall be charged with an offence and, where no specific penalty is provided by this Act in respect of such act or omission, he shall be liable, upon conviction, to a fine not exceeding one thousand penalty units and, in the case of an individual, he may also be barred from holding office of a trade union or association for such period as the Court may determine.

[As amended by Act [No. 13 of 1994](#)]

**107. Essential service certificates**

- (1) Every employee engaged or employed in an essential service shall be issued by his employer with an essential service certificate in such form and in such manner as may be prescribed and such certificate shall be *prima facie* evidence for the purpose of any inquiry or proceedings under this section that the person to whom such certificate has been issued is engaged or employed in an



essential service and that the attention of such employee has been drawn to the provisions of this section.

- (2) Any person engaged or employed in an essential service who, without just cause or excuse (the onus of proof shall lie on him), does any act, or omits to do any act, the doing or the omission of which is likely to hinder or interfere with the carrying on of an essential service, shall be guilty of an offence.
- (3) No employer or other person shall take part in a lockout and no employee, trade union or other person shall take part in a strike which is likely to hinder or interfere with the carrying on of any essential service.
- (4) No person engaged in an essential service shall be eligible for payment of his salary if such person goes on strike or go-slow.
- (5) Any person who incites or encourages a person engaged or employed in an essential service to do any act, or omit to do any act, the doing or the omission of which is likely to hinder or interfere with the carrying on of an essential service, shall be guilty of an offence.
- (6) A police officer may arrest without warrant any person whom he has reasonable grounds to believe is acting in contravention of this section, and any person who obstructs a police officer in the execution of his duties under this subsection shall be guilty of an offence.
- (7) Any person who contravenes subsection (2), (4) or (5) shall be liable, upon conviction, to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding six months and may be prohibited from holding office in a trade union for such period as the Court may determine.
- (8) Any employer or other person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction—
  - (a) in the case of a body corporate, to a fine not exceeding one thousand penalty units; or
  - (b) in any other case, to a fine not exceeding four hundred penalty units.
- (9) Any employee, trade union or other person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction—
  - (a) in the case of the trade union, to a fine not exceeding one thousand penalty units; or
  - (b) in the case of the employee or other person, to a fine not exceeding two hundred penalty units.
- (10) For the purpose of this section, "essential service" means—
  - (a) any service relating to the generation, supply or distribution of electricity;
  - (b) any hospital or medical service;
  - (c) any service relating to the supply and distribution of water;
  - (d) any sewerage service;
  - (e) any fire brigade; or
  - (f) any service for the maintenance of safe and sound conditions in a mine of—
    - (i) underground working and drainage;
    - (ii) shafts and shaft installations; or
    - (iii) machinery and plant.

*[As amended by Act [No. 13 of 1994](#)]*

**108. Restriction on discrimination in employment**

- (1) No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status of the employee.
- (2) Any employee who has reasonable cause to believe that the employees' services have been terminated or that the employee has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that the employee has been discriminated against, on any of the grounds set out in subsection (1) may, within thirty days of the occurrence which gives rise to such belief, lay a complaint before the Court:

Provided that the Court may extend the thirty-day period for a further three months after the date on which the complainant has exhausted the administrative channels available to him.

- (3) The Court shall, if it finds in favour of the complainant—
  - (a) grant to the complainant damages or compensation for loss of employment;
  - (b) make an order for re-employment or reinstatement in accordance with the gravity of the circumstances of each case.

**109. Conduct of ballots**

- (1) The Minister may, by statutory instrument, make regulations governing the conduct of ballots for any representative body, and such regulations may include provisions relating to the giving of notices to any person qualified to vote in such ballots.
- (2) Where a secret ballot is to be held in more than one place in connection with any matter, it shall be held in all such places on the same day or days and between the same hours.

**110. Complaints against irregularities in elections**

- (1) Any interested person who has reasonable grounds to believe that the election of any person to any office in a representative body has been conducted in an irregular manner, that person may, not later than twenty-one days after the holding of such election, lay a complaint before the Court.
- (2) The Court may, if it is satisfied that an irregularity has occurred in the conduct of any election, declare the election null and void and order fresh elections to be conducted under the supervision of such person, and on such conditions, as the Court may determine.

**111. Report to National Assembly**

The Minister shall each year lay before the National Assembly a report on the working of this Act.

**112. Regulations by Minister**

The Minister may, by statutory instrument, make regulations for the purpose of giving effect to the provisions of this Act.

**113. Repeal and savings**

- (1) The Industrial Relations Act, 1990, is hereby repealed.
- (2) Notwithstanding the repeal of the Industrial Relations Act, 1990, any statutory instrument or directive issued or made under that Act shall remain in force, so far as it is not inconsistent with this Act until revoked or cancelled under this Act.

*[Act No. 36 of 1990]*

**Schedule (Sections 11, 29, 42, 56)**

The Constitution of every representative body shall include—

- (a) the name of the representative body and the address of its registered office in Zambia;
- (b) the principal objects for which the representative body is established and the class or classes of employees or employers which the representative body shall represent:

Provided that—

- (i) a representative body may include in its constitution objects other than principal objects and, subject to the other provisions of this Act, any such representative body shall have power to apply its funds for any lawful objects authorised under its constitution;
  - (ii) no objects of any representative body shall not, by reason that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust;
- (c) the purposes to which the funds of the representative body may be applied;
- (d) the organisational structure of the representative body, the mode of appointment and removal of the officers responsible for the administration of the representative body and the powers and duties of such officers;
- (e) the payment of subscriptions and fees by the members and the method of collection and the grounds for disqualifying a member from voting on any matter concerning the representative body;
- (f) the vesting and safe custody of the funds and property of the trade representative body, the banking and investment of its funds, and the maintenance, inspection and periodic auditing of its accounts and all other financial records;
- (g) provision for disqualification from election or appointment to any office in the representative body of any office holder who has misappropriated the funds of the representative body;
- (h) the election of the officers within six months after registration of a representative body and thereafter, at regular intervals of not more than four years;
- (i) the election of not less than two and not more than four trustees of the representative body;
- (j) the election by secret ballot supervised by a proper officer for a strike;
- (k) the procedure for amending the constitution of the representative body; and
- (l) a provision to ensure that all classes of members of a representative body are adequately and effectively represented on all organs of a representative body.